

**CALIFORNIA GENERAL PROVISIONS
FOR
WESTERN STATES CONTRACTING ALLIANCE
DELL MARKETING L.P.**

1. Applicable Law

This contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this contract.

2. Compliance with Statutes and Regulations

- a) Contractor warrants and certifies that in the performance of this contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of contractor's violation of this provision.
- b) If this contract is in excess of \$500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).

3. Contractor's Power and Authority

The contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, contractor avers that it will not knowingly enter into any arrangement with any third party which might abridge any rights of the State under this contract.

4. Assignment

This contract shall not be assignable by the contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit contractor from freely assigning its right to payment, provided that contractor remains responsible for its obligations hereunder.

Should the State desire financing of the assets provided hereunder, the contractor agrees to assign to a State-designated lender its right to receive payment from the State for the assets in exchange for payment by the lender of the cash purchase price for the assets. Upon notice to do so from the State-designated lender at any time prior to payment by the State for the assets, the contractor will execute and deliver to the State-designated lender an assignment agreement and any additional documents necessary for the State selected financing plan. The State-designated lender will pay the contractor according to the terms of the contractor's invoice upon acceptance of the assets by the State.

5. Order of Precedence

In the event of any inconsistency between this Participating Addendum and Master Price Agreement No. 90-00151, the following order of precedence shall apply:

- a) executed participating addendum(s);

- b) the terms and conditions of the Master Price Agreement;
- c) exhibits to the Master Price Agreement;
- d) the list of products and services contained in the purchase order;
- e) the Request for Information (or similar) document; and
- f) Contractor's Response to the Request for Information (or similar document).

6. Time is of the Essence

Time is of the essence in this contract.

7. Termination for Non-Appropriation of Funds

- a) If the term of this contract extends into fiscal years subsequent to that in which it is approved, such continuation of the contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, contractor agrees to take back any affected goods furnished under this contract, terminate any services supplied to the State under this contract, and relieve the State of any further obligation therefor.
- b) State agrees that if paragraph a) above is invoked, goods shall be returned to the contractor in substantially the same condition in which delivered to the State, subject to normal wear and tear. State further agrees to pay for packing, crating, transportation to contractor's nearest facility and for reimbursement to the contractor for expenses incurred for their assistance in such packing and crating.

8. Payment Provisions

- a) Acceptance
A procuring agency shall determine whether all products delivered to it meet the contractor's published specifications. No payment shall be made for any products until the products have been accepted in writing by the procuring agency. Unless otherwise agreed upon between the procuring agency and the contractor, within thirty (30) days from receipt of the invoice, the procuring agency shall accept or reject the products or services.
- b) Required Payment Date
Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after i) the date of acceptance of goods or performance of services; or ii) receipt of an undisputed invoice -- whichever is later.
- c) Taxes
Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or goods supplied to the State pursuant to this contract.
- d) Invoices shall be submitted to the procuring agency.

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9. Newly Manufactured Goods

All goods furnished under this contract shall be newly manufactured goods; used or reconditioned goods are prohibited, unless otherwise specified.

Information Technology goods containing parts which have been remanufactured/reconditioned, are acceptable, but only if the goods have been warranted as new.

10. News Releases

Unless otherwise exempted, news releases pertaining to this contract shall not be made without prior written approval of the Department of General Services.

11. Violation of Copyright Laws

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

12. Examination and Audit

Contractor agrees that the State shall have the right to review and copy any records and supporting documentation pertaining to performance of this contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment. Contractor agrees to allow the auditor(s) access to such records during normal business hours.

13. Disputes

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the contract, contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the contract adjustment for which contractor believes the State is liable. If the contractor is not satisfied with the decision of the Department Director or designee, the contractor may appeal the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this contract is for information technology goods and/or services, the decision may be appealed to an Executive Committee of State and contractor personnel.
- b) Pending the final resolution of any dispute arising under, related to or involving this contract, contractor agrees to diligently proceed with the performance of this contract,

including the delivery of goods or providing of services in accordance with the State's instructions. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this contract.

- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of contractor's demand, it shall be deemed a final decision adverse to contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

14. Priority Hiring Considerations

If this contract includes services in excess of \$200,000, the contractor shall give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

15. Covenant Against Gratuities

The contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any officer or employee of the State with a view toward securing the contract or securing favorable treatment with respect to any determinations concerning the performance of the contract. For breach or violation of this warranty, the State shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which contractor agreed to supply shall be borne and paid for by the contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

16. Nondiscrimination Clause

- a) During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California

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Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- b) The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

17. National Labor Relations Board Certification

Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

18. Assignment of Antitrust Actions

Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a) In submitting a quote to the State, the supplier offers and agrees that if the quote is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, material, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
- b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the quote price, less the expenses incurred in obtaining that portion of the recovery.
- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
 - i) the assignee has not been injured thereby, or
 - ii) the assignee declines to file a court action for the cause of action.

19. Drug-Free Workplace Certification

The contractor certifies under penalty of perjury under the laws of the State of California that the contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i) the dangers of drug abuse in the workplace;
 - ii) the person's or organization's policy of maintaining a drug-free workplace;
 - iii) any available counseling, rehabilitation and employee assistance programs; and,
 - iv) penalties that may be imposed upon employees for drug abuse violations.
- c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting contract:
 - i) will receive a copy of the company's drug-free policy statement; and,
 - ii) will agree to abide by the terms of the company's statement as a condition of employment on the contract.

20. Year 2000 Compliance

Contractor warrants that it will provide only Year 2000 compliant products and/or services to the State in all present and future contracts and that Year 2000 compliant products and/or services meet the following requirements:

- a) For information technology goods and/or services, the contractor warrants and represents that the hardware, software and firmware goods and services delivered under this contract shall be able to accurately process date data (including, but not limited to, calculating, comparing, and/or sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other information technology used in combination with the information technology being acquired, properly exchanges date data with it. This warranty and representation is subject to the warranty terms and conditions of this contract. Nothing in this warranty shall be construed to limit any rights or remedies the State may otherwise have under this contract with respect to defects other than Year 2000 performance.
- b) Resellers must obtain written confirmation from the manufacturer that the goods and/or services are Year 2000 compliant, as defined above.

21. Forced, Convict and Indentured Labor

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In accordance with PCC Section 6108, contractor warrants that no foreign-made equipment, materials, or supplies furnished to the State pursuant to this contract are produced in whole or in part by, or with the benefit of, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor

22. Recycling

Contractor hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods, supplies offered, or products used in the performance of this contract meet or exceed the minimum percentage of recycled material as defined in PCC Sections 12161 and 12200.

23. Child Support Compliance Act

For any contract in excess of \$100,000, the contractor acknowledges in accordance with PCC Section 7110, that:

- a) The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

24. Americans with Disabilities Act

Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

25. Purchase Orders Funded in Whole or Part by the Federal Government

All contracts (including individual orders), except for State construction projects, which are funded in whole or in part by the federal government may be canceled with 30 days notice, and are subject to the following:

- a) It is mutually understood between the parties that this contract (order) may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the contract (order) were executed after that determination was made.
- b) This contract (order) is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal year during which

the order was generated for the purposes of this program. In addition, this contract (order) is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this contract (order) in any manner.

- c) It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this contract (order) shall be amended to reflect any reduction in funds. The department has the option to void the contract (order) under the 30-day cancellation clause or to amend the contract to reflect any reduction of funds.

26. Debarment Certification (Federally Funded Service Contracts Over \$10,000)

The prospective recipient of Federal assistance funds is required to certify that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The contractor is required to complete the Debarment Certification before entering into a contract.

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GENERAL PROVISIONS (3/27/2000) MODIFIED AS FOLLOWS:

1. Definitions -- deleted (WSCA #1)
2. Contract Formation -- deleted
3. Complete Integration -- deleted (WSCA 25)
4. Severability -- deleted (WSCA 26)
5. Independent Contractor -- deleted (WSCA 21)
6. Applicable Law -- retained (#1)
7. Compliance with Statutes and Regulations -- retained (#2)
8. Contractor's Power and Authority -- retained (#3)
9. Assignment -- retained (#4 -- and included GSMArt language from CMAS)
10. Waiver of Rights -- deleted (WSCA 27)
11. Order of Precedence -- modified for WSCA (#5)
12. Packing and Shipment -- deleted (WSCA 10)
13. Transportation Costs and other Fees or Expenses -- deleted (WSCA 10)
14. Time is of the Essence -- retained (#6)
15. Delivery -- deleted (WSCA 18)
16. Substitutions -- deleted (WSCA15)
17. Inspection, Acceptance and Rejection -- deleted (modified in GPs #8)
18. Samples -- deleted
19. Warranty -- deleted (WSCA 11)
20. Safety and Accident Prevention -- deleted
21. Insurance -- deleted
22. Termination for Non-Appropriation of Funds (retained #7)
23. Termination for the Convenience of the State of California -- deleted (DOIT requirement) (WSCA 8.A.)
24. Termination for Default -- deleted (WSCA 8.B.)
25. Force Majeure -- deleted (WSCA 19)
26. Rights and Remedies of State for Default -- deleted (WSCA 8.B., et seq)
27. Contractor's Liability for Injury to Persons or Damage to Property -- deleted (WSCA 30 w/modification)
28. Indemnification -- deleted (WSCA 23)
29. Invoices -- deleted -- modified for Payment Provisions (#8)
30. Required Payment Date (modified for Payment Provisions -- #8 -- includes acceptance, required payment date -- language as of 01/01/01, taxes, invoices go to procuring agency)
31. Taxes -- deleted (included in Payment Provisions, #8)
32. Newly Manufactured Goods -- retained version which accepts remanufactured/reconditioned if warranted as new (#9)
33. Contract Modification -- deleted (WSCA 24)
34. Confidentiality of Data -- deleted (WSCA #34)
35. News Releases -- retained (#10)

36. Patent, Copyright and Trade Secret Indemnity -- deleted (WSCA #12 and added paragraph on Violation of Copyright Laws to incorporate the Executive Order on same subject)
37. Examination and Audit -- modified to restrict audit period to 3 years, to limit that the State (and not a designated rep) shall have exam and audit rights; and to remove the ability to audit records at the subcontractor level. (#12)
38. Disputes -- retained (#13)
39. Stop Work -- deleted as there is no integrated system work
40. Priority Hiring Considerations -- retained (#14)
41. Covenant Against Gratuities -- retained (#15)
42. Nondiscrimination -- retained (#16)
43. NLRB -- retained (#17)
44. Assignment of Antitrust Actions (#18)
45. Drug-free (#19)
46. Year 2000 Compliance (#20)
47. Forced Convict, Indentured, and Child Labor -- included language re child labor/sweatshop labor which is effective 01/01/01 (#21)
48. Recycling (#22)
49. Child Support Compliance (#23)
50. ADA (#24)
51. Federal Government Funded contracts -- retained language from CMAS --(#25 and #26)

WSCA language

- 1-2 no change
3. Modified
4. no change
5. deleted and replaced with (#5)
6. deleted and replaced with (#8)
7. Modified to reflect effective date of 7/16/01
- 8 no change
9. deleted and replaced with (#7)
- 10-11 no change
12. Modified; added Compliance with Copyright
- 13-16 no change
17. deleted and replaced with (#20)
18. no change
19. Modified
20. deleted and replaced with (#12)
- 21-22 no change
23. no change
- 24-28 no change
29. deleted and replaced with (#16)
30. deleted words "indirect, special or" in Line 6
31. deleted and replaced with (#1 and #15)
32. no change

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- 33. deleted in its entirety
- 34. no change
- 35-45 no change
- 46. Add paragraph between 2nd and 3rd paragraph--
contractor to provide reports according to PA
- 47. no change (Amendment #1)
- 48. Modified (Amendment #2) Dell liable if it assisted in
development of Technical Specifications
- 49. no change (Amendment #3)